

PATENT COOPERATION TREATY

TRANSLATION

From the
INTERNATIONAL SEARCHING AUTHORITY

PCT

WRITTEN OPINION OF THE
INTERNATIONAL SEARCHING AUTHORITY

(PCT Rule 43bis.1)

To:

Date of mailing (day/month/year)	See Form PCT/ISA/210 (sheet 2)
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Applicant's or agent's file reference SM 5273-03WO		FOR FURTHER ACTION See paragraph 2 below
International application No. PCT/EP2005/003329	International filing date (day/month/year) 30.03.2005	Priority date (day/month/year) 02.04.2004
International Patent Classification (IPC) or both national classification and IPC A61 K7/48, A61 K7/02		
Applicant SCHWAN-STABILO COSMETICS GMBH & CO. KG.		

1. This opinion contains indications relating to the following items:

<input checked="" type="checkbox"/>	Box No. I	Basis of the opinion
<input type="checkbox"/>	Box No. II	Priority
<input type="checkbox"/>	Box No. III	Non-establishment of opinion with regard to novelty, inventive step and industrial applicability
<input type="checkbox"/>	Box No. IV	Lack of unity of invention
<input checked="" type="checkbox"/>	Box No. V	Reasoned statement under Rule 43bis.1(a)(i) with regard to novelty, inventive step or industrial applicability; citations and explanations supporting such statement
<input type="checkbox"/>	Box No. VI	Certain documents cited
<input type="checkbox"/>	Box No. VII	Certain defects in the international application
<input type="checkbox"/>	Box No. VIII	Certain observations on the international application

2. **FURTHER ACTION**

If a demand for international preliminary examination is made, this opinion will be considered to be a written opinion of the International Preliminary Examining Authority ("IPEA") except that this does not apply where the applicant chooses an Authority other than this one to be the IPEA and the chosen IPEA has notified the International Bureau under Rule 66.1bis(b) that written opinions of this International Searching Authority will not be so considered.

If this opinion is, as provided above, considered to be a written opinion of the IPEA, the applicant is invited to submit to the IPEA a written reply together, where appropriate, with amendments, before the expiration of 3 months from the date of mailing of Form PCT/ISA/220 or before the expiration of 22 months from the priority date, whichever expires later.

For further options, see Form PCT/ISA/220.

3. For further details, see notes to Form PCT/ISA/220.

Name and mailing address of the ISA/EP	Authorized officer
Facsimile No.	Telephone No.

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Box No. I Basis of this opinion

1. With regard to the language, this opinion has been established on the basis of the international application in the language in which it was filed, unless otherwise indicated under this item.

☐

This opinion has been established on the basis of a translation from the original language into the following language
_____, which is the language of a translation furnished for the purposes of international search (under Rule 12.3 and 23.1(b)).

2. With regard to any nucleotide and/or amino acid sequence disclosed in the international application and necessary to the claimed invention, this opinion has been established on the basis of:

a. type of material

☐

a sequence listing

☐

table(s) related to the sequence listing

b. format of material

☐

in written format

☐

in computer readable form

c. time of filing/furnishing

☐

contained in the international application as filed.

☐

filed together with the international application in computer readable form.

☐

furnished subsequently to this Authority for the purposes of search.

3. ☐ In addition, in the case that more than one version or copy of a sequence listing and/or table(s) relating thereto has been filed or furnished, the required statements that the information in the subsequent or additional copies is identical to that in the application as filed or does not go beyond the application as filed, as appropriate, were furnished.

4. Additional comments:

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**Box No. V Reasoned statement under Rule 43bis.1(a)(i) with regard to novelty, inventive step or industrial applicability;
citations and explanations supporting such statement**

1. Statement

Novelty (N)	Claims	21, 30-32	YES
	Claims	1-20, 22-29	NO
Inventive step (IS)	Claims		YES
	Claims	1-32	NO
Industrial applicability (IA)	Claims	1-32	YES
	Claims		NO

2. Citations and explanations:

Reference is made to the following documents:

D1: US-B1-6 491 931
D2: WO 03/094868 A
D3: EP-A-1 213 010
D4: EP-A-1 541 126
D5: EP-A-O 987 016
D6: EP-A-O 832 645

Novelty

Claim 1 discloses that the preparation contains at least two polymers. A person skilled in the art would interpret this expression to mean that the preparations contain two different polymers in the form of a blend. The conditions stated in claim 8, according to which the two polymers can be present in the form of a copolymer, would not be interpreted in this manner by a person skilled in the art. The subject matter of claims 1-7, 9-32 is therefore not clear (PCT Article 6). The disclosure in claim 8 should be added to claim 1.

D1 (example 1/film-forming copolymer: polyester-polyurethane) discloses an oil-in-water emulsion that is prejudicial to the novelty of claims 1-2, 4, 8, 10, 13,

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15-18, 22-26, 28 (PCT Article 33(2)).

D2 (examples 1, 2, 4, 5, 7) discloses make-ups that are prejudicial to the novelty of claims 1-13, 15-16, 18-20, 22-26, 28 (PCT Article 33(2)).

D3 (examples 2 (1-2, 4-6); 3(3)) discloses make-ups that are prejudicial to the novelty of claims 1-13, 15-16, 18, 20, 22-26, 28.

D4 was published on 15 June 2005, i.e. after the filing date of the present application. When the present application enters the regional European phase before the EPO, D4 may become prior art according to EPC Article 54(3). Examples 56-60 in D4 are prejudicial to the novelty of the present invention.

The claimed formulations are the result of a multiple selection from the disclosures in D5. The formulations of the examples in D5 do not contain pigment. The subject matter of claims 1-32 is therefore novel.

The formulations of examples 4, 6, 7, 12, 13, 14, 15, 19 in D6 are prejudicial to the novelty of claims 1-11, 13, 15-16, 18-20, 22-29.

Inventive step

The present application does not meet the requirements of PCT Article 33(1) because the subject matter of claims 1-32 is not based on an inventive step within the meaning of PCT Article 33(3).

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It is clear from document D5 that film-forming polymers are used as an anti-wrinkle coating (paragraphs 1, 4-6, 15-37, 67). According to documents D1, D2, D6, the preparations according to the invention are like a second skin, they do not migrate, do not transfer, do not stick, produce an elastic film that adheres at the point of application, are particularly stable ... (D2; page 5, line 8 to page 6, line 17; D6: page 2, lines 40-47; D1: column 1, lines 54-63).

Hence the formulations and their properties are already known or foreseeable, and the solution proposed in claims 1-32 of the present application cannot be considered inventive (PCT Article 33(3)).